OPINION

BY MAKHDOOM ALI KHAN

Judges and arbitration

ARBITRATION is the buzzword these days in legal and business circles. A few decades ago, regarded as the esoteric pursuit of a few commercial lawyers, today it is everywhere. It is promoted as a viable and expeditious alternative to litigation. It promises to reduce the burden on overloaded judicial dockets. In investor-state disputes, it is projected as enabling good governance.

Some days ago, it reared its head in an unlikely place: the hearing of applications for constituting a larger bench in the 26th Constitutional Amendment case. A learned judge contradicted the submission by counsel that judicial failure to conform to international norms is impeding foreign investment. According to the judge, what investors primarily want are speedy decisions by commercial courts and early enforcement of arbitration awards.

This is true. Expeditious enforcement by courts is of little consequence, however, where judges are found wanting in impartiality and independence. If that was not so, denial of justice or of fair and equitable treatment would not be international standards to which states must conform. Gone are the days when it was, perhaps, arguable that judicial conduct cannot be attributed to the state.

Now, international law is to the contrary. The International Law Commission's 'Articles on Responsibility of States for Internationally Wrongful Acts' put this beyond doubt. But for this we may have escaped liability in two major international investment-arbitration cases. The breach of international law obligations in both was, to a significant degree, occasioned by Supreme Court judgements.

Arbitration is not a silo. Those who think in silos come to grief early. At several stages, from commencement to enforcement, its success depends on robust judicial conduct. It is also not self-contained. Every young lawyer, eager for a career in international arbitration, is taught that the first step is to acquire a thorough understanding of the laws of contract and of civil and commercial rights.

Hon. Judge Charles N. Brower's recent readable and learned book *Judging Iran: A Memoir of the Hague, the White House and Life in the Front Lines of International Justice* is a treasure trove of information about the world of international arbitration and the challenges for domestic courts. It shows how all-round experience as a lawyer helps launch a successful international career.

At Harvard, he did not take more than one international law course, fearing it would diminish his job prospects with leading law firms. Later, he worked for a Wall Street law firm, while also appearing pro bono to defend indigent litigants. In time, he worked with the Ford, Carter and Reagan administrations on diverse issues. He appeared both for states and investors, in international arbitration and domestic litigation, and was appointed by the United States government as a judge to the Iran-United States Claims Tribunal. A successful career as a much-sought-after international arbitrator followed.

His book highlights the advantages of international arbitration. Investor-state arbitration is a significant development in international law. Unlike the past, it facilitates an individual to directly sue a foreign state, without the intervention of his home state.

The message is that being anti-business is not smart economic strategy. He is, however, conscious of its limitations. While a state can be sued by a foreign investor, it cannot counterclaim for human rights violations or for environmental damage. Rich in anecdote, the book is a wonderful starting point for anyone thinking of a career in international arbitration and a treasure trove of knowledge for experienced practitioners.

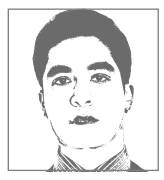
> Arbitration is not a silo. Those who think in silos come to grief early.

The Iran-USCT jurisprudence is rich in insight. From truncated tribunals to judges assaulting judges, from the value of precedent to bone-headed challenges to arbitrators, from principles for determination of state liability to the measure of freedom for states to regulate, in the public interest, a wide range of issues were raised and determined. Its decisions strengthened the foundations of international commercial law.

Devoted to the subject, which combines his passion for law with an interest in international affairs, Judge Brower rightly asserts that foreign investors are suspicious of a judiciary which lacks a solid reputation to dispense impartial justice. Without an independent judiciary, there cannot be a predictable and stable legal system for dispute resolution.

Its absence leads to shoals, where not only challenges to bench formation but also international arbitrations run aground. It signals that those who venture forth irrespective do so at their own peril. Sensible foreign investors naturally steer clear. ■

The writer is a lawyer.



BY ASAD-UL-MULK

Grundnorm

"AT last he beat his music out./ There lives more faith in honest doubt./ Believe me, than in half the creeds," wrote Alfred Lord Tennyson in his famous elegy *In Memoriam*. The 27th Amendment runs a dagger through the Constitution, and many lawyers, like myself, who have no political affiliation, doubt its benevolence.

The constitution of a country is its "highest positive norm" explains Hans Kelsen in *General Theory of Law and State*, and derives its normativity from a hypothetical 'Grundnorm', which is posited above it. The entire function of the Grundnorm, writes Kelsen, "is to confer law-creating power on the acts of the first legislator and on all the other acts based on the first act".

Kelsen elaborates on the 'doctrine of revolutionary legality' in *Pure Theory of Law*. "The norms of a legal order are valid until their validity is terminated according to the rules of this legal order", he belabours. A legal revolution is said to occur when "the valid constitution has been changed or replaced in a manner not prescribed by the constitution valid until then".

Those supporting the amendment argue that since the amendments have been passed in accordance with Articles 238 and 239 of the Constitution, and the requisite two-thirds majority of parliamentarians voted in favour, there should be no qualms. Here arises the debate between two schools of thought — proceduralism and substantivism, with the former only willing to look into the procedure, and the latter also acquiescing to evaluate the amendments' substance.

The 27th Amendment strikes at the heart of the Constitution, the separation of powers and the rule of law. It strips the Supreme Court of its supreme status, all but in name, and assigns power to hear constitutional cases to a newly created Federal Constitutional Court by placing it at the helm. It endows the executive with the power to immediately pack the FCC. It undermines the security of judicial tenure and provides for transfer as a means to punish non-compliant high court judges. It introduces a mechanism for compulsory retirement of judges, and allows the executive to circuitously brandish this power with great nuisance.

According to Yaniv Roznai, a proponent of substantivism, in *Unconstitutional Constitutional Amendments*, courts in a democratic society must step in "first, [when] the work of the amendment authority contradicts basic principles of the democratic system; second, the nature of this failure is such that its correction cannot be made through the political institution itself, but rather through an independent agent that is detached from the ordinary representative political system". According to Roznai, "a revolutionary change" in the sense that Kelsen described "can also occur through legal means".

This argument, known as 'the basic structure doctrine', prevailed with the Indian supreme court initially in 'Kesavananda Bharati v. State of Kerala' (1973) and later in Minerva Mills v. Union of India (1980) when it struck down a constitutional amendment that sought to render 'fundamental rights' subservient to the 'directive principles of state policy'. Chief justice Yeshwant Chandrachud wrote that the amendment, if allowed to stand, would deny India "the heaven of freedom into which Tagore wanted his country to awake and [thrust it towards] the abyss of unrestrained power".

Benin's national assembly amended Article 80 of the constitution, thereby extending its own parliamentary term from four to five years. A month later, the Beninese constitutional court declared the amendment to be unconstitutional. The Turkish, Brazilian and Czech constitutional courts have also invalidated a number of constitutional amendments.

> The amendment came against a dubious backdrop.

Proceduralists argue that even if the amendments sail though, they can be challenged before the FCC, without realising that the very coming into existence of the FCC is a testament of not just the success, but the invitation extended to the 'legal revolution' vis- -vis a change in the Grundnorm, akin to a black hole's event horizon from where there is no return. The prospects of a court ruling on its jurisdiction is one thing, on its very existence and legality quite another.

The 27th Amendment came against the backdrop of shady general elections, five judges of the Islamabad High Court complaining to the Supreme Court of interference in their judicial work, a former prime minister being behind bars with over 100 cases against him, a national history of civilian supremacy being compromised and the judicature being manipulated to serve vested interests.

To avoid taking into account all of the above, and find comfort in a strictly proceduralist view is analogous to the ridicule of the apocryphal joke 'other than that, Mrs Lincoln, how was the play?' ■

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FROM THE PAST PAGES OF DAWN

1975 | Fifty years ago

Uproar in Punjab PA

LAHORE: The Punjab Assembly today [Nov 17] had the first taste of the furious mood of the recently reinforced Opposition when the proceedings were dominated by uproarious scenes. The occasion was provided by the maiden speech of the newly-elected Leader of the Opposition Mr Talib Husain Chaudhri, who lashed out at the Government "on its anti-democratic actions". The young Leader of the Opposition, a Minister in Khar's Cabinet, repeatedly referred to the "abduction of two former Ministers Mian Iftikhar Tari and Chaudhri Irshad, whose whereabouts are not known." He maintained that the House could not function in isolation from what was happening outside the Assembly building. It would be frivolous to expect the Provincial Legislature to perform its duties, if there was no democracy outside the House and the people were being subjected to torture and curbs.

… These remarks infuriated the Education Minister, Mr Ghulam Nabi, who … made a full-throated attack on those who had crossed the floor and were now occupying Opposition benches. [He] said these members were not justified to attack the Government's policies as they had been elected on the ticket of the PPP. — Staff correspondent

1950 | Seventy-five years ago

Blueprint for Libya

FLUSHING MEADOWS: The UN General Assembly on Friday [Nov 17] approved the final blueprint to give Libya her full independence … by the end of next year. The vote on the proposal which would also grant economic assistance to the former Italian colony and admit it to the UN was 50 to nothing with the Soviet bloc and Turkey abstaining.

A Russian resolution providing all foreign troops to be withdrawn from Libya within three months and military bases dismantled was rejected by a large vote. The plan provides for the setting up of a National Assembly in Libya, by January 1, and establishing a provisional Government there not later than April 1 next year. The transfer of power will be effected gradually. — News agencies

[Meanwhile, according to a Press note by Education Division,] under the Technical Assistance Programme of UNESCO, an agreement has been concluded between Pakistan and UNESCO, under which UNESCO will initiate two projects costing approximately 1,80,000 dollars… . The first project deals with the development of broadcasting. … The second project relates to the development of Geo-Physical work in Pakistan.

LETTERS TO THE EDITOR

letters@dawn.com

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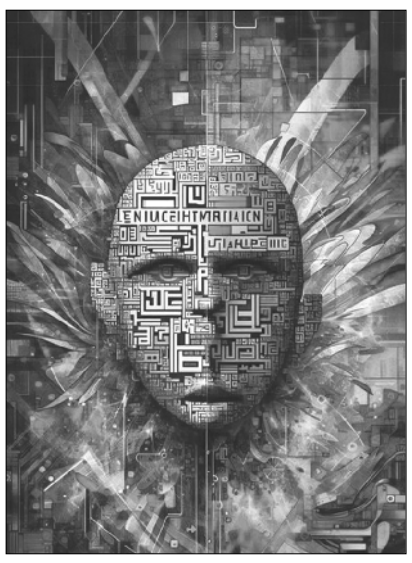


Language aspect of the digital divide

A LEADING Pakistani musician recently remarked on his social media account that he sometimes writes in English because "it lets me hide", and he writes in Urdu because "it lets me bleed". The tweet, raw and resonant, captures a quiet truth about language in Pakistan's digital age. English, for many, is the language of polish, distance and global reach. Urdu and our regional languages carry the weight of intimacy, messiness and memory. The choice between them is rarely neutral. It is a negotiation of identity, audience and emotional safety.

In Pakistan's online spaces, English has quietly become the dominant dialect of influence. It is the language of visibility, legitimacy and aspiration. This shift is not accidental. It is rooted in a longer history of linguistic imperialism, a term popularised by Robert Phillipson to describe how dominant languages suppress others through structural and symbolic power.

In Pakistan, this dynamic has colonial roots, but the digital age has accelerated it. The internet, while seemingly democratic, often rewards those who speak in global languages, especially English.

Linguists have long taken note of this shift, with scholars like Braj Kachru and Robert Baumgardner arguing that English in South Asia is not monolithic. It has been indigenised, localised and hybridised. Yet, even this localised English often overshadows indigenous languages in digital spaces. A random scroll through Pakistani social media content is enough to show that while English dominates serious discourse, Urdu surfaces in memes, punchlines, or poetic interludes.

Language is not a mere linguistic tool. It is a vessel of feeling. When we express heartbreak, joy or rage in a language that is not native to our emotional landscape, something gets lost. English is learned in classrooms, not kitchens. It is the language of exams, not lullabies. Yet it is increasingly the language of confession, connection and catharsis online. Although this emotional shift carries consequences. It creates a disconnect between the lived experience and digital expression. It also marginalises those not fluent in English.

For many, English is a lifeline to upward mobility and a passport to opportunity. These advantages come at a cost. The very language that empowers some can exclude others. It can silence local voices, flatten cultural nuance, and reinforce linguistic hierarchies. In Pakistan's digital economy, English is often a prerequisite for participation, entrenching class divides and deepening elitism. The imbalance is not just cultural. It is coded. Platforms reward English. The internet does not just reflect linguistic hierarchy, it reinforces it.

Some comments in the vernacular get flagged, others are sidelined. They are digital silences. Yet resistance flickers. Hashtags like #TweetInUrdu reclaim space. Every post in a mother tongue is a quiet refusal to vanish.

The tension between the market tongue and the mother tongue is no longer just academic. It is existential. Reclaiming linguistic space online does not mean rejecting English. It means ensuring that other languages thrive alongside it. Platforms can promote multilingual content. Influencers can normalise Urdu and regional languages in serious discourse. Educational institutions can integrate digital literacy in mother tongues. These shifts may appear small, but, collectively, they resist a system where only one language carries value.

The rise of English in Pakistan's digital age is not neutral. It is a form of soft power: subtle, pervasive and often invisible. Yet, its effects are tangible. They shape who gets heard, who gets seen, and who gets remembered. The future of our culture may depend on whether we continue to submit to English, or dare to feel again in the language that raised us.

Iman Rehman
Karachi

Cultural roots

THE decline of the Urdu language among Pakistan's youth is widely regarded as a significant issue. Literature, in all its forms, is the principal medium for transmitting shared cultural and traditional values. As such, a younger generation alienated from its native language will inevitably become disconnected from its cultural heritage.

Urdu's historical roots run deep. Emerging from various dialects across India, it evolved through decades of enrichment by migrants, traders and local people. Urdu's uniqueness lies in its magical flow, its capacity for profound expression, and its rich literary tradition spanning over centuries. Those who grew up even in the era of Pakistan Television (PTV) would remember a time when the quality of language spoken on national television was of top quality, showcasing Urdu's depth and beauty.

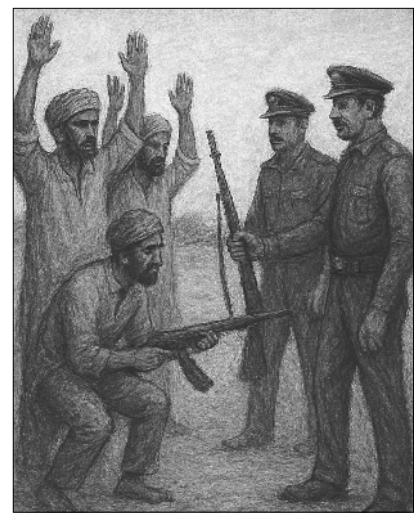
Today, the situation is drastically different. While 60 million people speak Urdu as their first language and 104 million as their second, the digital age has fractured our attention spans. Smartphones offer instant access to content, but this convenience has diminished our capacity for deep engagement with Urdu literature. We scroll through subpar poetry on social media rather than immersing ourselves in classical and modern texts of worth and value.

The diaspora experience compounds this crisis. Children of Pakistani immigrants often cannot read Urdu script and hesitate to speak the language with their grandparents because they are disconnected from their linguistic roots.

If we fail to preserve the language now, our future generations will inherit a hollow cultural identity. They will not be able to access the wisdom of our intellectuals, the sheer beauty of Urdu literature, and the essence of what makes us Pakistani.

Syeda Mahiba Jaffari
Karachi

Surrender policy



RECENTLY, the Sindh government proudly announced what it called 'a new beginning in Katcha'. Through the new Sindh Surrender Policy, dacoits from the Larkana and Sukkur regions are being allowed to give up their weapons in return for rehabilitation, education and livelihood support. A grand event was held in Shikarpur where 72 bandits surrendered before top officials, political leaders and tribal elders. The event was presented as a great step towards peace, but many believe it is easier said than done.

For years, Katcha has been a land where fear rules. Bandits have kidnapped, robbed and killed people without much resistance. Several police operations have been launched and ended without having any change in the ground reality. The recent decrease in crimes has been presented as a success, but the reality is that it is mostly the result of silent understandings between criminals and local power players.

The real problem lies deeper: The unrest in Katcha area is not just a policing issue; it is a product of long-standing poverty, illiteracy and neglect. The people of the region have been left high and dry for decades, without access to proper schools, jobs and healthcare.

All this while, faith-healers, clerics and feudal lords have tightened their grip on society. They pull all the strings, ensuring that the law serves their interests instead of justice.

Tribal rivalries also add fuel to the fire. Many of the dacoits are actually victims of old feuds that are often based on false accusations. To escape revenge or unfair treatment, they flee to the Katcha area and eventually join the gangs for their survival. Later, these same people are used by landlords and politicians as guns for hire in settling their own scores.

In this situation, the new policy seems like putting old wine in a new bottle. It gives the appearance of peace, but ignores the real causes. Unless these roots are cut out, this so-called new beginning will fade.

Sanaullah Mirani
Daharki

Let sanity prevail

BOTH Pakistan and Afghanistan have Islam as their faith, but they continue to bicker only because India continues to use Afghanistan against Pakistan. Nothing would please the West, India and Israel more than a chance to see Pakistan destabilised.

Pakistan has made repeated efforts to make sense prevail, but the Taliban regime in Afghanistan is reluctant to move towards peace. The immediate way out now is for Pakistan to seal its borders with Afghanistan, and deploy troops so that an escalation may not lead to an all-out war.

Pakistan, Afghanistan and Bangladesh should forge ties and join hands with Iran to form a solid Islamic bloc in the region. In due course of time, Central Asian countries may also join the alliance. This is what the West-India-Israel nexus has been trying to prevent.

It is no secret that Indian Muslims are at the receiving end of their government's policies. One wonders what makes Afghanistan believe that India cares about it. India is only obsessed with Pakistan that has a huge potential to move ahead. As for Afghanistan, it is a pawn in Indian hands.

Angabeen Ahmad
Karachi

▶ **DESTRUCTIVE DEMOCRACY:** True democracy is the best mode of governance. However, the people of Pakistan have generally heaved a sigh of relief every time an elected government has been sent packing. The lack of performance on the part of political governments is the reason behind people's disillusionment with the democratic process. The case of Sindh should serve as an obvious example in this regard. Within Sindh, the district of Dadu is the best example in many ways of how governance can ruin the life of people.
Gulsher Panhwer
Johi

▶ **UNCHECKED PRIVILEGE:** Across Punjab, hundreds of official cars belonging to various departments, police units and administrative offices continue to operate in a state of neglect. Most of these vehicles have not undergone proper maintenance, tuning and emission testing for years, but they remain on the roads, emitting thick clouds of carbon dioxide and other toxic gases. This unchecked privilege exposes the dangerous double standards of the government, and undermines its climate-related initiatives. If the Punjab government truly intends to combat climate change and safeguard public health, it must first hold itself accountable. Regular inspection, mandatory maintenance, and transparent reporting of all government vehicles should be enforced without exception.
M. Abrar Raza
Okara

▶ **PLASTIC BAGS:** The Sindh government announced a complete ban on the manufacturing, sale as well as use of plastic shopping bags across the province effective June 15 this year, but the ban is nowhere in sight. The plastic bags remain easily accessible and are being used by vendors and shopkeepers alike. Other than a few reputed supermarkets, all shopkeepers, small or big, use plastic shopping bags. The ban is strictly enforced in Lahore where businesses, no matter how small, comply with the directives of the provincial government. Sindh should follow Punjab's example.
Yasir Haleem Shaikh
Karachi

External Ombudsman

Veteran journalist Muhammad Ali Siddiqi is *Dawn's* External Ombudsman (DEO). His duty is to attend to our readers' complaints, and to respond to them professionally. DEO is the investigating authority to whom all complaints can be referred, and it is DEO who takes notice of any alleged violations of *Dawn's* code of ethics, and informs the Editor for appropriate action.
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